

CONOCO, INC.

IBLA 83-682

Decided August 10, 1983

Appeal from the decision of the Bureau of Land Management canceling oil and gas lease CA 1715.

Affirmed.

1. Oil and Gas Leases: Cancellation--Oil and Gas Leases: Lands Subject to--Oil and Gas Leases: Noncompetitive Leases

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

APPEARANCES: Floyd E. Radloft, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Conoco, Inc. (formerly Continental Oil Company, hereinafter "Conoco") has appealed from the April 28, 1983 decision by the California State Office of the Bureau of Land Management ("BLM") canceling Conoco's noncompetitive oil and gas lease CA-1715 and ordering a refund of rentals paid therefor. This action was taken by BLM pursuant to an instruction contained in a previous Board decision, Stanley Ustan, 71 IBLA 116 (1983). However, because Conoco was not made a party to the Ustan appeal, our decision in that case was not res judicata as to Conoco, and the instant appeal of Conoco must be reviewed on its merits. Cf. Donald W. Coyer (On Judicial Remand), 50 IBLA 306, 311-12 (1980); (appeal pending).

In Stanley Ustan, in 1971 the appellant (Ustan) had been drawn with first priority to receive a noncompetitive oil and gas lease for a parcel 23 which included the N 1/2 and S 1/2 SE 1/4, sec. 26, T. 31 S., R. 24 E., Mount Diablo meridian; the land involved in this appeal. BLM had posted this parcel for the simultaneous filing of lease offers pursuant to 43 CFR 3112 because the lands which comprised the parcel had previously been subject to oil and gas lease S-66251, which had terminated. In the May 1971 filing, 65 offers were submitted for the parcel, from which Ustan's offer was drawn

first. However, prior to issuance of Ustan's lease, BLM found that the acreage described above had been included in a recreation plan for Power Project No. 2426, the California Aqueduct, and it was determined that oil and gas development would not be compatible with the recreation and wildlife improvement projects for which that land had been identified. Rather than appeal, Ustan accepted a lease for the balance of the land in the parcel and, to expedite the refund of the advance rental, filed a formal withdrawal of his offer for the said N 1/2 and S 1/2 SE 1/4 of sec. 26.

The record before us is insufficient to determine why or how the land status changed. However, on March 14, 1974, Continental Oil Company (now Conoco, Inc.) filed a regular ("over-the-counter") noncompetitive oil and gas lease offer which included the subject lands, and other lands. For reasons not material to this discussion, BLM rejected the offer as to the other lands, but on January 31, 1977, issued oil and gas lease CA 1715 to Conoco for the subject 400 acres. Subsequently, Ustan filed a regular "over-the-counter" lease offer for the same lands, which offer was rejected by BLM because those lands were under the existing lease held by Conoco.

Ustan appealed, asserting his priority won in the drawing of simultaneous offers filed in 1971, when BLM had listed the lands as part of parcel 23. He also argued that Conoco should not have been granted the lease in response to its over-the-counter offer because the regulations required that such lands could only be made available for leasing again through the simultaneous filing procedure. In deciding the appeal, the Board held, *inter alia*, that Ustan had retained no priority in consequence of the 1971 drawing. However, the Board also found that BLM should have posted the lands as available for the simultaneous filing of lease offers; that in the absence of such posting the lands were unavailable for leasing and any lease issued is void as to such lands and should be canceled; and stated, "[T]herefore, BLM is directed to take action pursuant to 43 CFR 3112.6-3 to cancel lease CA 1715 [held by Conoco] unless the rights of a bona fide purchaser have intervened or facts not apparent on the record before us would require otherwise." *Stanley Ustan, supra*, at 71 IBLA 118.

Pursuant to this direction by the Board, BLM canceled the lease, and Conoco filed this appeal.

Conoco's first argument is that when its over-the-counter offer was filed for this land in March 1974, the regulation (43 CFR 3112.1-1) did not expressly state that where lands which had formerly been included in leases which had expired or terminated by operation of law or had been relinquished or canceled and then withdrawn from the operation of the mineral leasing laws would be available upon revocation of the withdrawal only through the simultaneous filing procedure. <sup>1/</sup>

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<sup>1/</sup> 43 CFR 3112.1-1 was amended effective May 23, 1980, 45 FR 35163, but, as noted by appellant, still does not expressly address the specific issue of lands previously leased, then withdrawn from leasing, and later restored to availability for leasing. We do not find that this revision has any effect on the question. Effective August 22, 1983, the regulation was again revised (48 FR 33678), again without effect on the issue presented here.

This argument fails on two counts, one general and one specific. First, there is no basis for appellant simply to presume that the temporary withdrawal or segregation of land which has previously been subject to an oil and gas lease creates an exception to the requirement that such lands become available for leasing only through the simultaneous filing procedure when the lands are restored. This was addressed in our decision in David A. Provinse, 38 IBLA 347 (1978), wherein we considered the same argument based upon appellant's interpretation of 43 CFR 3112.1-1 as it was worded at the time of Conoco's offer in the instant case. In Provinse we said, at 38 IBLA 351:

Appellant contends that by its terms, this regulation does not require that lands be listed for simultaneous filings in cases where the lands have been "withdrawn from leasing." It is true that lands would not be listed as long as they are withdrawn from leasing, but it does not follow that because the lands may have been within a withdrawal during part of the life of a lease and for sometime thereafter that the special posting procedure established in 43 CFR 3112.1-2 would not be required once the lands are restored to leasing. The special simultaneous filing procedure of 43 CFR 3112 was established to preclude the "Land Office Rush" of filings when oil and gas leases terminated or expired. The reasons for the regulation to assure order and fairness in the oil and gas leasing program are as applicable where there has never been a withdrawal. Despite appellant's contentions that the ordinary and plain meaning of the language in regulation 43 CFR 3112.1-1 compels the result he desires, we find that the opposite is true. The clear meaning of the regulation is that lands in cancelled, relinquished, terminated or expired leases will not be subject to the filing of new lease offers until they are posted for the simultaneous filing procedure in 43 CFR 3112.1-2. [Footnote omitted.]

Notwithstanding Conoco's disagreement with our holding on this point in Provinse, supra, it is irrelevant in this specific case, as it appears that no formal withdrawal or segregation from oil and gas leasing was ever imposed on the lands at issue. The status report prepared by BLM in response to Conoco's offer includes only two notations referable to the subject lands, viz:

WDLs: Sec. 26 - SE 1/4 SE 1/4 in PP 2426, Apin dtd 2-22-65 for Major License for the Calif. Aqueduct filed 12-20-1965 w/FPC by Dept. of Water Resources, State of Calif. (No Notice of Land Wdl filed) [Source of emphasis is unknown.]

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\* \* \* R/W S-1025 in Sec. 26 - Por. of E 1/2 E 1/2, For construction & operation of Calif. Aqueduct, Act 2-15-1901, filed 10-6-1967 by State of Calif., Dept. of Water Resources. ADV. PERMISSION GRANTED EFF. 10-27-1967.

Moreover, the three status plats incorporated in the record make no reference to the imposition or revocation of a withdrawal affecting these

lands. Although the record of the lease offer S-4550 by Stanley Ustan in 1971 is not before us, we presume that the partial rejection of that offer was not based upon a withdrawal but, rather, that it represented an exercise of the Secretary's discretion not to lease the lands based upon a finding by the authorized officer that oil and gas development would not be compatible with the uses applied for by the State of California. Ustan's failure to appeal that decision precluded agency review of the propriety of that determination.

In any event, regardless of whether there was a withdrawal, the lands were not thereafter available for leasing unless and until posted for the simultaneous filing of applications, and Conoco's lease was properly canceled. Sam P. Jones, 71 IBLA 42 (1983); Paul S. Coupey, 64 IBLA 146 (1982); David A. Provinse, *supra*; Claude C. Kennedy, 12 IBLA 183 (1973).

Finally, Conoco notes that the BLM decision provides for the reimbursement of lease rentals, but asserts that, as a general matter, rentals are only a part of the cost of maintaining an oil and gas lease, suggesting that it has invested periodically in the evaluation of all of its non-producing leaseholds, and that it therefore has an equitable interest in the subject lease which is sufficient to warrant reversal of the decision to cancel. A similar contention was made and rejected by the Board in Paul S. Coupey, *supra* at 64 IBLA 147, where the appellant cited the fact that he had done extensive aerial photography of the leased lands and had negotiated and committed to a remunerative farmout agreement prior to cancellation of the lease. The Board stated there that while it was regrettable that appellant might be disadvantaged, the cancellation of the lease must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Franklin D. Arness  
Administrative Judge  
Alternate Member

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Robert W. Mullen  
Administrative Judge

